

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Section 63.71 Application to Discontinue IP	)	
Communications Application to Discontinue	)	Comp. Pol. File No. 628
Services	)	
	)	
	)	
	)	

**Order**

**Adopted: February 13, 2003**

**Released: February 13, 2003**

By the Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order we conditionally grant an application to discontinue service filed by IP Communications, L.P. (IP or Applicant) on December 27, 2002 pursuant to section 63.71 of the Commission's rules.<sup>1</sup> We require IP to continue providing service for an additional two weeks so that the Public Utility Commission of Texas may continue to assist customer migration to new providers. We do not address the request for additional time filed by Centex Title and Ancillary Services, Inc. (Centex) but rather require Centex, to the extent it wishes, to file further comments on or before February 20, 2003.

**II. BACKGROUND**

2. On December 27, 2002, IP filed an application with the Federal Communications Commission (FCC or Commission), requesting authority under section 214(a) of the Communications Act of 1934, as amended,<sup>2</sup> and section 63.71 of the Commission's rules, to discontinue the provision of telecommunications services in the state of Texas.<sup>3</sup> IP stated that it provides telecommunications service to wholesale customers that are Internet Service Providers and directly to end user retail customers. The application states that IP provided written customer notice of its intent to discontinue service on or before December 26, 2002 and proposed discontinuing service in Texas on February 17, 2003 or as soon thereafter as permitted by the Commission's regulations.

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<sup>1</sup> 47 C.F.R. § 63.71.

<sup>2</sup> 47 U.S.C. § 214(a).

<sup>3</sup> IP states that it provides high speed data services to wholesale and retail customers. IP's decision to discontinue service was necessitated by bankruptcy.

3. Subsequently, on January 13, 2003, the Wireline Competition Bureau released a Public Notice requesting comment on the application.<sup>4</sup> The Public Notice indicated that, under the Commission's rules, absent any determination otherwise by the Commission, the application would be deemed approved 31 days from the release of the Public Notice, in this case, on February 13, 2003.<sup>5</sup>

4. On January 23, 2003 Centex filed comments requesting that the Commission require IP to continue providing services to Centex through at least April 15, 2003 to allow it to migrate to services provided by WorldCom.<sup>6</sup> IP filed a response on January 31, 2003 asserting that Centex had elected to use the migration as an opportunity to upgrade its technology from DSL to frame relay and that it was this upgrade that necessitated the additional time requested by Centex.<sup>7</sup> IP argues that the extension requested by Centex is impossible and unreasonable given IP's current financial straits. Centex has not yet filed a response.

5. On February 10, 2003, the Public Utility Commission of Texas (Texas Commission) filed comments requesting that the Commission require IP to continue providing service through February 27, 2003, because, according to the Texas Commission, under Texas law IP is not permitted to discontinue service until that date.<sup>8</sup> Moreover, the Texas Commission states that it is actively assisting customers in migrating to alternative carriers and the additional time will allow it to assist a significant number of customers that would otherwise suffer interruptions of service. IP responds that it has taken steps to diminish harm to end-users and disputes the Texas Commission's interpretation of the Texas discontinuation requirements.<sup>9</sup>

## II DISCUSSION

6. Section 214(a) of the Communications Act states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."<sup>10</sup> The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.<sup>11</sup>

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<sup>4</sup> Comments Invited on IP Communications Corporation Application to Discontinue Domestic Telecommunications Service, *Public Notice*, DA 01-3101, Comp. Pol. File No. 628 (Jan. 13, 2003) (Public Notice).

<sup>5</sup> Public Notice at 2. See 47 CFR § 63.1(c). Under the terms of its application, however, IP could not discontinue service until February 17, 2003.

<sup>6</sup> Comments of Centex Title and Ancillary Services, Inc.

<sup>7</sup> Reply to Centex of IP.

<sup>8</sup> Comments of the Texas Commission. at 5, citing Tex. Util. Ann. § 54.253(b), (d)(2) (Vernon 1998)

<sup>9</sup> Reply to Texas Commission of IP.

<sup>10</sup> 47 U.S.C. § 214(a).

<sup>11</sup> *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996* Report and Order, CC Docket No. 97-11; *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order, AAD File No. 98-43 14 FCC Rcd 11364, 11380 (1999).

7. The Texas Commission has indicated that IP is obligated under Texas law to provide service for an additional 14 days, until February 27, 2003 and that the Texas Commission is using this time to assist customers in migrating to alternative service providers.<sup>12</sup> We note that the Texas Commission's requirements are not inconsistent with our own. As we have previously noted, compliance with our discontinuance requirements should not be construed as in any way obviating or limiting a carrier's duty to comply with state discontinuance requirements.<sup>13</sup> Moreover, pursuant to section 63.71 of the Commission's rules,<sup>14</sup> although the Commission (or the Wireline Competition Bureau under delegated authority) may allow an applicant to discontinue service after 31 days, this process is by no means automatic. The 31-day period allows the Commission to determine whether affected customers will have a reasonable opportunity to obtain alternative service. The Texas Commission has indicated that the extra two weeks will allow it to assist a number of customers -- none of whom have filed comments in this proceeding -- to find new providers. Accordingly, we find it appropriate to extend IP's obligation to continue domestic telecommunications services in Texas to ensure its compliance with the Texas Commission's requirements.

8. We do not directly resolve Centex's request today. We note that Centex has not yet addressed IP's argument that Centex has created its own problem by attempting to upgrade its technology in the face of IP's pending discontinuation. Although our requirements are designed to protect end-users, these end-users are under a corresponding obligation to act expeditiously in order to mitigate potential damage. Discontinuation of service does not provide an unlimited opportunity for customers to shop for more favorable deals or to upgrade their service. This is especially true in the case of a bankruptcy where the discontinuing carrier has limited resources to transition customers. In this case, although Centex alleges that it requires an additional 60 to 90 days to obtain frame relay services, it has not yet addressed the allegations by IP that it has failed to pursue alternatives which would allow it to migrate more quickly to a service equivalent to that which it currently obtains. We are concerned that Centex has not taken all actions necessary to migrate to a new provider and question whether frame relay is the only alternative Centex could find to replace the services it had previously received from IP. Accordingly, we direct Centex, to the extent it wishes to respond to IP's comments, to do so by February 20, 2003.

### III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, that the application

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<sup>12</sup> Comments of Texas Commission at 5-6. We do not address IP's assertion that it has no obligation under Texas law to continue service. The proper forum for that dispute would be provided under Texas law. That notwithstanding, the dispute would be rendered moot if IP were to discontinue service before the actual authority of the Texas Commission had been determined.

<sup>13</sup> *ACC Telecommunications, LLC and ACC Telecommunications of Virginia Application to Discontinue Domestic and International Telecommunications Services*, Order, Comp. Pol. File No. 592, DA 02-1911 (rel. Aug. 2, 2002). See also *In the Matter of e.spire Application to Discontinue Domestic and International Telecommunications Services*, Order, Comp. Pol. File No. 214, DA 02-3392 (rel. Aug. 2, 2002).

<sup>14</sup> 47 C.F.R. § 63.71.

of IP Communications to discontinue domestic telecommunications services in Texas IS GRANTED consistent with the terms of this Order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Bureau Chief  
Wireline Competition Bureau